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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 449
No. 456

NEWARK FIRE INSURANCE COMPANY, APPELLANT, *vs.* STATE BOARD OF TAX APPEALS AND THE CITY OF NEWARK, APPELLEES	No. 449
UNIVERSAL INSURANCE COMPANY AND UNIVERSAL INDEMNITY INSURANCE COMPANY, APPELLANTS, *vs.* STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY AND THE CITY OF NEWARK, APPELLEES	No. 456

CONSOLIDATED BRIEF OF APPELLEES

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SUBJECT INDEX

PAGE

I. SUPPLEMENTARY STATEMENT OF THE CASE 2

1. Charter Obligation to maintain principal office in New Jersey 2
2. Tax questioned is the only tax (except real estate tax) which New Jersey imposes on appellants 3
3. New Jersey exemption of property taxed elsewhere makes double taxation impossible 4
4. There is no legally effective "finding" that intangibles have a "business situs" in New York 4

II. APPELLEES' POSITION AS TO JURISDICTION 5

Jurisdiction is doubtful because—

1. Decision of constitutional question not essential to decisions of State Court 7
2. There is no substantial federal question presented 7

III. SUMMARY OF ARGUMENT.

Point I. Prevailing rule is that intangibles are taxable at owner's domicile 8
Point II. Inheritance of intangibles held taxable primarily—or solely—at owner's domicile 8
Point III. Taxation at "business situs" is supplementary to taxation at owner's domicile 9
Point IV. "Business situs" doctrine was designed to support justifiable taxation, not to support evasion of taxes 10
Point V. Intangibles will be given a "business situs" for taxation only when (1) essentially used, (2) actually taxed and (3) held liable in taxing state 11
Point VI. "Commercial domicile" is not the basis for taxation; intangibles themselves must be "localized" 12
Point VII. State cases support appellees' position 12
Point VIII. Appellants use violation of statutory obligations as means to evade taxation 13

ARGUMENT

Point I. 14
Point II. 26
Point III. 28
Point IV. 32
Point V. 35
Point VI. 37
Point VII. 40
Point VIII. 44

CONCLUSION 46

CITATIONS

Cases:

Page

Baldwin v. *Missouri*, 281 U. S. 586 .... 8, 26, 36
Bank of Augusta v. *Earle*, 13 Pet. 519 38
Beidler v. *South Carolina Tax Commission*, 282 U. S. 1 .... 8, 36
Blodgett v. *Silberman*, 277 U. S. 1 .... 8, 18, 23, 36, 43
Coe v. *Errol*, 116 U. S. 517 34
Cream of Wheat Co. v. *Grand Forks*, 253 U. S. 325 .... 8, 17, 21, 38
Darnell v. *Indiana*, 226 U. S. 390 22
De Ganay v. Lederer, 250 U. S. 376 22
Dodge Bros., In re, 241 Mich. 241 41
Farmers Loan Co. v. *Minnesota*, 280 U. S. 204 .... 8, 10, 18, 31, 34, 37
First Bank Corp. v. *Minnesota*, 301 U. S. 234 .... 6, 8, 9, 10, 15, 20, 29, 31
First National Bank v. *Maine*, 284 U. S. 312 .... 8, 10, 19, 31, 43
Hawley v. *Malden*, 232 U. S. 1 22
Johnson Oil Refining Co. v. *Oklahoma*, 290 U. S. 158 21
Kidd v. *Alabama*, 188 U. S. 730 22
Klein v. *Board of Tax Supervisors*, 282 U. S. 19 22
Metropolitan Life Ins. Co. v. *New Orleans*, 205 U. S. 395 .... 9, 29
New Orleans v. *Stemple*, 175 U. S. 309 .... 9, 29
New York ex rel. Cohn v. *Graves*, 300 U. S. 308 23
New York ex rel. Whitney v. *Graves*, 299 U. S. 366 .... 12, 29, 40
Portland Hotel Co., In re, 232 Mich. 330 41
Rounds & Porter Lumber Co. v. *Livesay*, 66 F. (2d) 298 .... 13, 43
Safe Deposit & Trust Co. v. *Virginia*, 280 U. S. 83 22
Saginaw Mfg. Co. v. *Secretary of State*, 226 Mich. 1 41
Schuylkill Trust Co. v. *Pennsylvania*, 302 U. S. 506 .... 6, 10, 31
Southern Pacific Co. v. *Kentucky*, 222 U. S. 63 .... 15, 34
Truscon Steel Co., In re, 246 Mich. 174 .... 13, 42
Virginia v. *Imperial Coal Sales Co.*, 293 U. S. 15 21
Wheeling Steel Corp. v. *Fox*, 298 U. S. 193 .... 9, 12, 22, 23, 29
White Bros. Lumber Co. v. *Tax Appeal Board*, 222 Mich. 274 41
Wright v. *Louisville & Nashville R. Co.*, 195 U. S. 219 22

Statutes:

Statutes of New Jersey:

2 Compiled Statutes, 2839, Amended Laws 1929, Chapter 6, P. 18 .... 3, 45
General Tax Laws of 1916, Sec. 203 (1) (c) 4
Laws of 1918, Chap. 236, Sec. 307, p. 858 4
Laws of 1937, Chap. 164, p. 396 3
Rev. Statutes, Sec. 54:4-22 4
Rev. Statutes, Sec. 54:4-3.2 4

Law Reviews:

Multiple Taxation by the States, 48 Harvard Law Review, 407 .... 12, 40

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CONSOLIDATED BRIEF OF APPELLEES [1]

The same issues of law are decisive of these cases. The variations in the factual records are

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[1] Italics in this brief are ours unless otherwise indicated.

not of such importance as to require separate briefing. The appellees (respondents below) are identical. Accordingly, counsel for appellees present a consolidated brief, using the factual record and arguments of counsel for the Newark Fire Insurance Company as the basis for appellees' argument, except where special reference is made to the Universal Insurance Company case.

In order to state appellees' position as to the jurisdiction of the Court it will be necessary first to correct certain inaccuracies and omissions in the Statement of the Case made in behalf of appellants.

SUPPLEMENTARY STATEMENT OF THE CASE

Under the contentions of appellants, great importance is given to factors which may determine (1) the "business situs" of their intangible property; (2) the "commercial domicile" of the corporate owner—as distinguished from the admitted "legal domicile" in New Jersey, the state of incorporation; and (3) a possible liability to "double taxation".

The following matters, omitted from appellants' Statement of the Case have, therefore, material significance.

1. The statute under which appellants [1] were incorporated (in New Jersey) required the corporate charter to state:

> "The place where the *principal office* of said company is to be located *and its general*

[1] The Newark Company was incorporated under Special Act in 1811; but the statute under which all the appellants do business provides that they shall have a principal office within the State from which their general business shall be conducted.

> *business conducted, which shall be within this State.*" 2 Compiled Statutes, 2839, Amended laws 1929, Chapter 6, p. 18.

In 1937 (long after the taxes here involved were imposed) the foregoing requirement was amended to read:

> "'The place where its principal office in this state is located." Laws of 1937, Chap. 164, p. 396.

Whether this amendment operates to relieve *previously* chartered corporations from a *future* obligation to maintain their principal office and the general conduct of their business in the State of New Jersey is not an issue in this case. There is, however, a legal issue presented here, which is: Can the appellant corporation, obligated by statute to maintain its principal office, and generally to conduct its business, in the state of incorporation (which would make it unquestionably subject to the taxes imposed), relieve itself of such taxation by violating its statutory obligations—and then using its own wrong as a defense against just taxation?

2. The Court's attention should also be directed to the fact that the taxes here questioned constitute the *only* taxes imposed by New Jersey on these New Jersey Corporations (except real estate taxes, the assessments for which are deducted from any assessment on capital stock and surplus). The statute specifically provides that, "no franchise tax shall be imposed upon any such fire insurance company or other stock insurance company included

in this section". Laws of 1918, Chap. 236, Sec. 307, p. 858. Rev. Statutes, Sec. 54:4-22.

3. It is mentioned by counsel for appellants that no personal property taxes are paid by these New Jersey corporations in New York; but counsel omit to call attention to the New Jersey statute which generously eliminates any possibility of "double taxation", by the following provision:

> "The following property shall be *exempt* from taxation under this Act, namely:
>
> (1) (c) The personal property owned by citizens or corporations of this State *situate and being out of the State upon which taxes shall have been actually assessed and paid within* twelve months next before October first, being the day prescribed by law for commencing the assessment". General Tax Laws of 1918, Sec. 203 (1) (c); Rev. Statutes 54:4-3.2.

4. This statute gives significance to the further inaccuracy found in appellants' Statement of the Case in asserting that the Supreme Court and the Court of Errors and Appeals of New Jersey had "found that appellants' commercial domicile and the business situs of its intangible personal property taxed by the City of Newark was located in New York". (Newark Brief, p. 5.)

The exact fact is that—the Supreme Court of New Jersey considered the issues on the basis of what it termed "an inescapable premise", i.e., that the intangibles taxed had a "business situs" in New York. But, since this "premise" did not prevent the court from upholding the taxing power of New

Jersey, this "premise" could hardly be challenged on appeal; and we submit—

First, that any holding that intangibles have a "business situs" at a certain place would be a conclusion of law, not a finding of fact; and

Second, that any holding by a New Jersey court that certain property had a situs in New York for purposes of taxation would not *create* or establish such a situs, because the New Jersey opinion would not be binding on the courts of New York. So we have here only an *assumption* as to legal status which was made by the New Jersey court in an opinion leading to a decision which would have been the same if the *contrary* assumption had been made.

There has been no judicial ruling which is legally effective to subject appellants' intangibles to taxation in New York. Accordingly—since New York admittedly does not assert any taxing power over such property—how can appellants support their statement that the property taxed in New Jersey is "subject" to taxation in New York?

With a more adequate statement of the factual record, the New Jersey statutes and the issues raised, a serious question may arise as to the jurisdiction of this Court to review the judgments of the highest court of New Jersey in these cases.

APPELLEES' POSITION AS TO JURISDICTION

It is fair to state that appellants urged in the New Jersey courts their contention that the taxes imposed would deprive them of property in violation of the Fourteenth Amendment. This contention may have been based in part upon the ground of possible double taxation. But this cannot be

regarded as a substantial contention—because under the facts appellants are not being taxed, and cannot be taxed, twice on the same property. Furthermore, it has not yet been held that "double taxation" is forbidden if it happens that two states have taxing power over the same subject. *First Bank Corporation* v. *Minnesota*, 301 U. S. 234; *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 506.

The present substantial contention appears to be based on a denial of any jurisdiction of New Jersey over the subject matter of this taxation—a claim that the tax is one imposed wholly without authority and hence a deprivation of property without due process of law. Against this contention we would point out that the general rule that intangibles are taxable at the legal domicile of the owner is so thoroughly established in the law that this normal taxing power of the state of domicile must be conceded and can not be seriously questioned—at least until there be established a clear *and exclusive* power of such taxation in another sovereignty.

There is no evidence in the record to show that New York has or claims any power to tax these corporations on their intangibles. On the contrary, it is conceded that these corporations pay no personal property tax in New York. (Newark Rec. p. 20; Universal Rec. p. 33.) These intangibles have not been given a "situs for taxation" in New York by virtue of any effort of that State to tax them, or any decision of a New York court that they are subject to taxation in New York. There is, therefore, no basis in the record for claiming that a *clear and exclusive power* of taxation has

been established in the State of New York that *might* exclude the State of New Jersey from the exercise of its normal power to tax intangibles at the legal domicile of their owner.

This Court may well decide that it has no jurisdiction to review the judgments of the highest court of New Jersey in these cases, because (1) the decision of the constitutional question now urged by appellants was not essential to the decision of the cases by the State court, and (2) there is no substantial federal question presented to this Court. Since, however, the argument against the jurisdiction of this Court must be practically the same as the argument in support of the New Jersey judgments, we will proceed now to a single argument in favor of the validity of the taxes imposed.

SUMMARY OF ARGUMENT

POINT I.

The common law rule and the prevailing rule today is that intangibles are taxable at the domicile of the owner, under the doctrine of *mobilia sequuntur personam.*

Cream of Wheat Company v. *Grand Forks*, 253 U. S. 325;
Blodgett v. *Silberman*, 277 U. S. 1;
Farmers Loan Company v. *Minnesota*, 280 U. S. 204;
First National Bank v. *Maine*, 284 U. S. 312;
First Bank Corporation v. *Minnesota*, 301 U. S. 234.

POINT II.

In accord with this general rule is the specific rule that the inheritance of intangibles is taxable at the domicile of the decedent owner.

Blodgett v. *Silberman*, supra.
Farmers Loan Company v. *Minnesota*, supra.
Baldwin v. *Missouri*, 281 U. S. 586;
Beidler v. *South Carolina Tax Commission*, 282 U. S. 1;
First National Bank v. *Maine*, supra.

These inheritance tax cases also lay down the rule that such taxes can be imposed *only* by the domiciliary state. But this rule seems to be based,

in part at least, upon the reasoning that such inheritance taxes are not property taxes but "an excise or privilege tax imposed on the transfer of an intangible".

By a divided court it has been held that such a transfer is taxable only in the one state where the event takes place.

The inheritance tax cases emphasize the tendency of recent decisions of this Court to confine the power to tax intangibles, so far as possible, to one state—the state of the owner's domicile.

POINT III.

The general rule that intangibles are taxable at the owner's domicile has been supplemented, and, to an uncertain extent modified, by the comparatively modern doctrine that some intangibles may be found to have a "business situs", and thereby become taxable, outside the state of the owner's domicile.

> *New Orleans* v. *Stemple*, 175 U. S. 309;
> *Metropolitan Life Insurance Company* v. *New Orleans*, 205 U. S. 395;
> *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 193.
> *First Bank Corporation* v. *Minnesota*, supra.

(A) The doctrine—or fiction—of a "business situs" for intangibles developed out of consideration for the reasonable desire of a state to obtain revenues from any foreign corporation which was doing business within the state and enjoying the protection of its government.

(B) But the establishment of a "business situs" for the taxation of certain intangibles in a state other than that of the owner's legal domicile (wherein, according to general rule, all intangibles would be taxable) raised a new problem of possible multiple taxation, which has not yet been solved.

Farmers Loan Company v. *Minnesota*, supra. Page 213.
First National Bank v. *Maine*, supra. Page 331.
First Bank Corporation v. *Minnesota*, supra. Pages 239, 240.
Schuylkill Trust Company v. *Pennsylvania*, 302 U. S. 506, 516.

POINT IV.

In the present case the doctrine of a "business situs" for intangibles is invoked—*not in support of any taxing power exercised by a foreign state*, but to provide corporations with complete immunity from taxation of intangibles, by denying the taxing power of the only state exercising it—which is the state of incorporation and legal domicile.

The doctrine that intangibles may be given a "business situs" for taxation, which was designed to support a justifiable tax, cannot be used to support the evasion of all taxation of intangibles, for the following reasons:

First—the nature and reason for the doctrine is an equitable and fair distribution of the burdens of government.

Second—Just taxation is a practical problem; and a legal fiction developed in support of a justi-

fiable taxing power will not be extended to provide an escape from an alternative and equally justifiable taxing power.

Third—the doctrine can and should be so interpreted and applied as to sustain appropriate taxation by any state wherein the owner of intangibles engages in business, without depriving the state wherein the owner has his legal domicile of its coincident or alternative power of taxation.

POINT V.

Counsel for appellees contend—

A—That intangibles are given a "business situs" for taxation in a foreign state only when—

1—They are essential and integral parts of business conducted in the foreign state, *and*

2—They are definitely subjected to taxation by the laws of the foreign state, *and*

3—They have been correctly determined by the authorities of the foreign state (legislative, executive and judicial) to have a business situs within such state.

B—That intangibles do *not* acquire a "business situs" for taxation through the mere deposit of documentary evidences within a foreign state or through any activities of their owner *not coupled with* the exercise of a justifiable taxing power by the foreign state.

C—That when a "business situs" for taxation is given to intangibles in a foreign state the normal, underlying taxing power of the state of the owner's

domicile will be diminished, if at all, only to the extent necessary to avoid double taxation.

D—When the state of legal domicile provides an exemption for the owner of all properties (including intangibles) which are taxed outside the state, there is no sound basis for further curtailing the sovereign power of the domiciliary state to tax intangibles not elsewhere taxed.

POINT VI.

The establishment by a corporation of a "commercial domicile" outside the state of incorporation cannot by itself operate to take away the taxing power over intangibles otherwise possessed by the state of incorporation. The "business situs" of intangibles depends not on localization of management, but upon localization of the intangibles.

Wheeling Steel Corporation v. *Fox*, supra.
New York ex rel. Whitney v. *Graves*, 299 U. S. 366.

POINT VII.

The decisions of state courts pertinent to the present issue show—

First—that there is a conflict of authority; although according to a recent review it appears that a numerical majority of the states support "taxation by the state of domicile even though credits are taxed in another state under the business situs theory".

(See Multiple Taxation by the States, 48 Harvard Law Review, 407, 425.)

Second—that intangibles cannot be regarded as having a "business situs" for taxation until such taxation has been legislatively imposed, executively enforced and judicially approved. For example, the Michigan Supreme Court has repeatedly *declined* to approve taxation of intangibles owned by foreign corporations, on the "business situs" theory; and has consistently approved taxation of the intangibles owned by domestic corporations.

> *In re Truscon Steel Company*, 246 Michigan, 174.
>
> See also *Rounds & Porter Lumber Company* v. *Livesay*, 66 Fed. (2d) 298.

Third—that the most practical and desirable way to avoid multiple taxation, while at the same time sustaining unimpaired the sovereign power of each state to tax appropriately persons and corporations legally domiciled within the state, is that adopted by the State of New Jersey in providing a specific exemption from taxation of the personal property owned by citizens and corporations domiciled in the state which is actually taxed outside the state.

POINT VIII.

Appellants should not be permitted to take advantage of their own violation of statutory obligations as a means of evading taxation otherwise clearly within the power of the state of incorporation.

ARGUMENT

POINT I.

The argument of counsel for appellants is an effort to set aside the long established and fundamental rule for the taxation of intangibles at the domicile of the owner, on the ground that this rule is based on a fiction, *mobilia sequuntur personam*, which should be abandoned. With the abandonment of the old rule, counsel would give controlling force to a new rule based on another fiction—a rule that intangibles should be taxed only where they have a "business situs". Not only is the fictitious character of this "business situs" blandly disregarded, but also the unhappy consequences—of wholesale tax evasion and new conflicts of taxing power—which would flow from abandoning the well tested fiction of *mobilia sequuntur personam* in favor of the comparatively untried fiction of "business situs".

Real estate and tangible property being physical objects can have a physical situs. Therefore, a rule of law establishing a practically exclusive jurisdiction to tax tangible property at the place of its physical situs is both reasonable and generally enforceable; although difficulties do arise when tangible property is moved around and uncertainty is created as to its permanent situs. But when the taxing power is to be exerted over intangibles, it becomes more difficult to lay down a logical and enforceable rule.

> "The rule that property is subject to tax at its situs, within the territorial jurisdiction of the taxing state, readily understood

> and applied with respect to tangibles, is in itself meaningless when applied to intangibles which, since they are without physical characteristics, can have no location in space". *First Bank Corporation* v. *Minnesota*, 301 U. S. 234.

There are many obvious and persuasive reasons for taxing the owner of intangibles at his legal domicile, including the fact that intangibles can be more easily "located" there (that is, the existence and amount of intangibles can be more easily ascertained); and taxes can be more easily assessed and collected where there is jurisdiction over the person owning such property rights. Furthermore, there is justification for the exercise of taxing power because—

> "The economic advantages realized through the protection, at the place of domicil, of the ownership of rights in intangibles, the value of which is made the measure of the tax, bear a direct relationship to the distribution of burdens which the tax effects." *First Bank Corporation* v. *Minnesota*, supra.

Even tangible property may have an uncertain or evasive situs, as became apparent in the case entitled *Southern Pacific Company* v. *Kentucky*, 222 U. S. 63, where a sea going vessel, having no permanent situs at any port, was given a situs for taxation in the State of Kentucky, which is far from the sea, but which was the domicile of the owner corporation.

It needs no argument to demonstrate that credits and such intangibles as are represented by bonds

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and certificates of stock (which are frequently difficult to "locate", and the evidences of which may be easily, frequently and secretly moved from place to place) are likely to escape taxation altogether unless they are given their historical situs in accordance with the maxim *mobilia sequuntur personam*. Since it is one of the purposes and objects of judicial rules as to taxation to uphold the power of government to levy taxes on those capable of paying them, who should share the burdens of government in accordance with benefits received from the protections of government; and since it is one of the purposes and objects of judicial rules as to taxation *not* to encourage or to aid in the evasion of justifiable taxation, we submit that the Court cannot be expected lightly to abandon the useful fiction of *mobilia sequuntur personam* in favor of another fiction which would encourage and make easier the evasion of reasonable taxation.

There was no such purpose evident in the development of this newer fiction which ascribes a "business situs" to certain varieties of intangibles under certain limited conditions. But when counsel for appellants seek to establish an *exclusive* "jurisdiction" for the taxation of intangibles in a state where they are not actually taxed, in a state which has not even attempted to establish any taxing "jurisdiction" over them by any claim that such intangibles have a business situs therein, then counsel are seeking to debase the theory of "business situs" from a justification of desirable taxing power into a justification of undesirable tax evasion.

Thus we are compelled at the outset to insist that the common law rule is still the prevailing rule —that intangibles are taxable at the domicile of the owner, and that the doctrine of "business situs" is a supplement to, and not a substitution for, this prevailing rule; or, at the most, a modification, but not a destruction, of the normal power of taxation possessed by the state wherein the owner of intangibles is domiciled.

The principal case which squarely answers appellants' argument is *Cream of Wheat Company* v. *Grand Forks*, 253 U. S. 325, where this Court held that a corporation confessedly domiciled in ~~New Orleans~~ NORTH DAKOTA, incorporated under the laws of that state, was taxable there upon its intangible property, and "the fact that its property and business were entirely in another state did not make it any the less subject to taxation in the state of its domicile". The Court further held that the limitation imposed by the Fourteenth Amendment upon taxation by a state of a resident, "for property which has acquired a permanent situs beyond its boundaries", had no application to intangible property "even though the property is also taxable in another state by virtue of having acquired a 'business situs' there".

Since the foregoing case is squarely in point, counsel for appellants are forced to take the position that this case is no longer "controlling with reference to jurisdiction to tax intangibles which have acquired a business situs". (Newark Brief p. 28.) (To the same effect is the argument of counsel for the Universal Insurance Company summed up in their Brief at p. 18.)

We are, therefore, called upon to point out that in *Blodgett* v. *Silberman*, 277 U. S. 1, this Court definitely held as follows:

> "At common law the maxim 'mobilia sequuntur personam' applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicil or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.
>
> "Further, this principle is not to be shaken by the inquiry into the question whether the transfer of such intangibles, like specialties, bonds or promissory notes, is subject to taxation in another jurisdiction. As to that we need not inquire. It is not the issue in this case. For present purposes it suffices that intangible personalty has such a situs at the domicil of its owner that its transfer on his death may be taxed there." * * *

In *Farmers Loan Co.* v. *Minnesota*, 280 U. S. 204, the Court strongly upheld the power of the creditor's domicile (New York) to tax the inheritance of Minnesota bonds and denied the power of the debtor's domicile to levy an inheritance tax

upon their transfer. The majority of the Court was plainly moved by the desire to establish principles that would prevent multiple taxation and held:

> "Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles."

But, in this case the majority opinion expressly left open the question as to whether intangibles taxed at a "business situs" might also be taxed at the owner's domicile. Mr. Justice Stone, who concurred "in the result", and Justices Holmes and Brandeis, who dissented, all expressed the opinion that there was no constitutional objection to taxation of a single economic interest by two states where "legal relationships with different taxing jurisdictions" justified taxation by both.

In *First National Bank* v. *Maine*, 284 U. S. 312, the Court again sustained inheritance taxation of intangibles (shares of stock) by the state of domicile of the decedent owner (Massachusetts) *alone*, on the ground that "the transmission from the dead to the living of a particular thing, whether corporeal or incorporeal, is an event which cannot

take place in two or more states at one and the same time"; and further held:

> * * * "Practical considerations of wisdom, conv ience and justice alike dictate the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile; and these considerations are greatly fortified by the fact that a large majority of the states have adopted that rule by their reciprocal inheritance tax statutes." * * *

Again the Court reserved the question as to resolving any conflict of jurisdiction between the state of domicile and another state where intangibles might be "so used . . . as to give them a situs analogous to the actual situs of tangible personal property". The dissenting opinion of Mr. Justice Stone (in which Justices Holmes and Brandeis concurred) upheld the power of Maine also to tax the transfer, on the ground that "the stockholder could secure complete protection and effect a complete transfer of his interest only by invoking the laws of *both* states". To this, it was stated, there was no constitutional objection; and it was pointed out that this would not result in actual "double taxation", because the Maine statute directed the Massachusetts tax to be deducted from the Maine tax.

In *First Bank Corp.* v. *Minnesota*, 301 U. S. 234, the Court sustained a property tax against the owner of shares of stock which were used by the owner, a Delaware corporation, in its business in

Minnesota. The opinion of the Court, by Mr. Justice Stone, significantly points out that

> "Appellant's entire business in Minnesota is founded on the ownership of the shares of stock and their use as instruments of corporate control."

Thus it is made plain that these shares of stock were taxable in Minnesota, not because the certificates were deposited there, or because the company had executive offices there, but because these shares of stock were *necessarily used* in the conduct of business in Minnesota so that, like local accounts receivable or other localized credits, they had properly been *given* a "business situs" for taxation, *and had been taxed* by the State of Minnesota.

In this same opinion are several rulings particularly pertinent to the present issue:

> "Appellant is to be regarded as legally domiciled in Delaware, the place of its organization, and as taxable there upon its intangibles, see *Cream of Wheat Co.* v. *Grand Forks*, 253 U. S. 325, 328; *Johnson Oil Refining Co.* v. *Oklahoma*, 290 U. S. 158, 161; *Virginia* v. *Imperial Coal Sales Co.*, 293 U. S. 15, 19, at least in the absence of activities identifying them with some other place as their 'business situs.'"

Appellant in the above case argued that the shares of stock which it owned in Montana and North Dakota banking corporations were expressly made taxable in these respective states of their origin; and that "as due process forbids the imposition of a property tax upon intangibles in more than one state, they cannot be taxed in Minnesota".

The opinion replied:

"The logic is inexorable if the premises are accepted. But we do not find it necessary to decide whether taxation of the shares in Montana or North Dakota is foreclosed by sustaining the Minnesota tax. Nor need we inquire whether a non-resident shareholder, by acquiring stock in a local corporation, so far subjects his investment to the control and laws of the state which has created the corporation as to preclude any objection, on grounds of due process, to the taxation of the shares there, even though they are subject to taxation elsewhere, at their business situs. We leave those questions open. It is enough for present purposes that *this Court has often upheld and never denied the constitutional power to tax shares of stock at the place of the domicil of the owner.* *Hawley* v. *Malden*, 232 U. S. 1, 11, 12; *Klein* v. *Board of Tax Supervisors*, 282 U. S. 19, 24; *Wright* v. *Louisville & Nashville R. Co.*, 195 U. S. 219; *Kidd* v. *Alabama*, 188 U. S. 730; *Darnell* v. *Indiana*, 226 U. S. 390. And it has fully recognized that the business situs of an intangible affords an adequate basis for fixing a place of taxation. See *Wheeling Steel Corp.* v. *Fox*, supra; *De Ganay* v. *Lederer*, supra; cf. *Safe Deposit & Trust Co.* v. *Virginia*, 280 U. S. 83, 91."

Realizing that the Court is sufficiently familiar with its own opinions so that extended quotation is usually inadvisable, we take the liberty of quoting further from this recent opinion because it pro-

vides a much better expression than we could otherwise present of the apparent conflict of theories regarding equitable and valid taxation, which must be at least partially resolved in the decision of the present case—

> "The rule that property is subject to taxation at its situs, within the territorial jurisdiction of the taxing state, readily understood and applied with respect to tangibles, is in itself meaningless when applied to intangibles which, since they are without physical characteristics, can have no location in space. See *Wheeling Steel Corp.* v. *Fox, supra,* 209. The resort to a fiction by the attribution of a tax situs to an intangible is only a means of symbolizing, without fully revealing, those considerations which are persuasive grounds for deciding that a particular place is appropriate for the imposition of the tax. Mobilia sequuntur personam, which has won unqualified acceptance when applied to the taxation of intangibles, *Blodgett* v. *Silberman,* 277 U. S. 1, 9-10, states a rule without disclosing the reasons for it. But we have recently had occasion to point out that enjoyment by the resident of a state of the protection of its laws is inseparable from responsibility for sharing the costs of its government, and that a tax measured by the value of rights protected is but an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. See *New York ex rel. Cohn* v. *Graves,* 300 U. S. 308.

"*The economic advantages realized through the protection, at the place of domicil, of the ownership of rights in intangibles, the value of which is made the measure of the tax, bear a direct relationship to the distribution of burdens which the tax effects.* These considerations support the taxation of intangibles at the place of domicil, at least where they are not shown to have acquired a business situs elsewhere, as a proper exercise of the power of government. Like considerations support their taxation at their business situs, for it is there that the owner in every practical sense invokes and enjoys the protection of the laws, and in consequence realizes the economic advantages of his ownership. We cannot say that there is any want of due process in the taxation of the corporate shares in Minnesota, irrespective of the extent of the control over them which the due process clause may save to the states of incorporation."

We submit that out of the foregoing fair statement of conflicting theories of taxation and out of the prior opinions of the Court (from which we have made a few citations and will hereafter add others), there emerge certain well-grounded principles upon which a decision of present issues can be based.

First—The state of the owner's domicile has undoubted "jurisdiction" (in the sense of "inherent power") to tax intangibles. Here is found, at least physical power which can be exerted over physical

objects, i.e., individual persons or the officers of a corporate person.

Second—There is a sound basis for the exercise of the taxing power possessed by any sovereign state by taxing those legally domiciled within it upon their intangibles; because the life, liberty and property of all such persons is primarily protected by the domiciliary state; and, in the case of a corporation created by the state, its life and liberty and power of possessing property has been created by and is sustained by the state of its incorporation.

Third—The legal creation of a "business situs" for intangibles outside the state of the owner's legal domicile is a highly artificial creation, a legal fiction utilized for the purpose of sustaining the judicial opinion that a state wherein an owner of intangibles uses them in the conduct of his business is an appropriate place to levy a tax on the owner, based on the value of his intangibles so used and thereby "localized" within the state.

Fourth—The "jurisdiction", that is, the inherent power, of the state of the owner's domicile to tax him on the basis of the value of his intangibles, is not *destroyed* because the owner voluntarily submits himself to taxation *elsewhere* on some or all of his intangibles by engaging in business in another state and using these intangibles therein.

Fifth—If there be any constitutional limitation upon the taxing power of the state of the owner's domicile by reason of taxes levied against the owner elsewhere, that limitation must be found in the principle that the citizen should be relieved from double taxation where two states have taxing power over the same subject matter, and that, as a matter of equity, the *exercise* of power by one

may be held superior to and exclusive of the exercise of power by the other.

Sixth—Therefore, there is no logical justification for the "constitutional" objection presented by appellants in the present case, whereby they seek to deny the "jurisdiction" of New Jersey (that is, the inherent and constitutional taxing power of a sovereign state!) to tax its citizens upon intangibles, although they are not taxed upon such intangibles by any other state.

POINT II.

We have heretofore referred to some of the cases establishing the rule that inheritance of intangibles is taxable at the domicile of the decedent; and to the further rule, supported by a majority of the Court, that such taxes can be imposed *only* by the domiciliary state. In addition to the cases previously quoted, brief reference should be made to at least two others.

In *Baldwin* v. *Missouri*, 281 U. S. 586, inheritance taxes were imposed by Illinois upon intangibles owned by a decedent resident of Illinois and bequeathed to her son, also an Illinois resident. The State of Missouri sought to impose an inheritance tax on those intangibles which consisted of deposits in Missouri banks, and bonds and promissory notes, the documentary evidences of which were within the State of Missouri. Most of the notes were, in fact, executed by citizens of Missouri and secured by liens upon Missouri real estate.

A majority of the Court held against the taxing power of the State of Missouri, and observed:

> "Ordinarily bank deposits are mere credits and for purposes of ad valorem taxation have situs at the domicile of the creditor only. The same general rule applies to negotiable bonds and notes, whether secured by liens on real estate or otherwise."

Thus, again the primary authority of the state of the owner's domicile was upheld. The dissenting minority of the Court did not question the taxing power of the domiciliary state, but maintained that there was no constitutional objection to taxation also by the State of Missouri.

In the dissenting opinion of Mr. Justice Holmes (in which Justices Stone and Brandeis concurred) the constitutional objection was dealt with as follows:

> "And what are the grounds? Simply, so far as I can see, that it is disagreeable to a bondowner to be taxed in two places. Very probably it might be good policy to restrict taxation to a single place, and perhaps the technical conception of domicil may be the best determinant. But it seems to me that if that result is to be reached it should be reached through understanding among the States, by uniform legislation or otherwise, not by evoking a constitutional prohibition from the void of 'due process of law', when logic, tradition and authority have united to declare the right of the State to lay the now prohibited tax."

In the dissenting opinion of Mr. Justice Stone (in which Justices Holmes and Brandeis concurred) it was trenchantly observed that—

> "Under the law, as it has been, no one need subject himself to double taxation by keeping his securities in a state different from his domicil, or by seeking the protection of its laws for his mortgage investments."

We submit that the inheritance tax cases provide a clear demonstration that—

First—Authority and logic support the taxing power of the domiciliary state.

Second—If double taxation is to be avoided, the logical means would be to sustain an exclusive taxing power in the domiciliary state.

Third—If, through the theory of a "business situs" a taxing power is sustained in a second state, either double taxation cannot be avoided (perhaps, should not be avoided) or, at the most, the taxing power of the domiciliary state may be diminished; but its taxing power will not be wholly denied or destroyed because of the existence of a coincident or alternative taxing power in another state.

POINT III.

We have been discussing heretofore the doctrine that intangibles may be found to have a "business situs" and thereby become taxable outside the state of the owner's domicile. It would be well to consider briefly the nature and reason for the "business situs" theory, so that it may not be expanded beyond all reason (as counsel for appel-

lants would have the theory expanded) and become destructive of the very purpose of equitable taxation which brought about the development of this theory.

We may well begin our consideration by quoting a definition of "business situs" from a recent opinion of this Court:

> * * * "When we speak of a 'business situs' of intangible property in the taxing State we are indulging in a metaphor. We express the idea of localization by virtue of the attributes of the intangible right in relation to the conduct of affairs at a particular place. The right may grow out of the actual transactions of a localized business or the right may be identified with a particular place because the exercise of the right is fixed exclusively or dominantly at that place. In the latter case the localization for the purpose of transacting business may constitute a business situs quite as clearly as the conduct of the business itself." *N. Y. ex rel. Whitney* v. *Graves*, 299 U. S. 366.

In the light of the foregoing definition, we can understand the reason for giving a "business situs" to accounts receivable and notes collectible within a particular state, as such intangibles were given a "business situs" in *New Orleans* v. *Stemple*, 175 U. S. 309; *Metropolitan Life Insurance Company* v. *New Orleans*, 205 U. S. 395; *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 193. Similar reasoning resulted in giving a "business situs" to shares of stock in *First Bank Corporation* v. *Minnesota*, supra, and accounted for the ruling in the

case last quoted (299 U. S. 366), holding that an interest in a membership in the New York Stock Exchange had a "business situs" for taxation in New York, for the reason that "the dominant attribute of relator's membership in the New York Stock Exchange so links it to the situs of the Exchange as to localize it at that place and hence to bring it within the taxing power of New York".

III A—It is evident when its origin and application are studied that the doctrine or fiction of a "business situs" for intangibles developed out of a consideration for the reasonable desire of a state to obtain revenues from a foreign corporation which was doing business within the state under protection of the laws and government of the state. The doctrine was not developed for the purpose of relieving the owner of intangibles from taxation in the state of his legal domicile; but for the purpose of justifying the taxation of the owner of such intangibles by another state wherein he was receiving the benefits of government and should share its burdens.

Where a state uses personal property owned by residents as the basis for levying a tax upon such residents, there is an obvious consistency and justification in levying similar taxes on non-residents when they have property within the state, which can be used as the basis for and measuring rod of taxation. Since intangibles have no physical situs in any state, it seemed reasonable to employ the fiction of a "business situs" in order to give them a situs for taxation in a state wherein such intangibles were actually used by a non-resident in carrying on business within the state. But the reasoning utilized to justify the taxation of a non-resident

doing business within a state, does not justify the exemption of the resident owner of intangibles from taxation by the state of his legal domicile, particularly when no other state is taxing him on the basis of his ownership of the same property.

III B—It is true that the establishment of a "business situs" for taxation of intangibles in a state other than that of the owner's legal domicile has raised a new problem of possible multiple taxation. This problem has not yet been solved by any ruling of the Supreme Court establishing an exclusive power to tax intangibles, either in the state of legal domicile, or in the state or states where a "business situs" for intangibles has been established.

See, *Farmers Loan Company* v. *Minnesota*, supra, Page 213; *First National Bank* v. *Maine*, supra, Page 331; *First Bank Corporation* v. *Minnesota*, supra, Pages 239, 240; *Schuylkill Trust Company* v. *Pennsylvania*, 302 U. S. 506, 516.

Since the last cited case is the most recent, perhaps it is well to point out that under its ruling the State of Pennsylvania is held to have the power to tax shares of stock in a Pennsylvania corporation, "notwithstanding the ownership of the stock may also be a taxable subject in another state". The opinion of the Court reads, in part, as follows:

> * * * "The state constitution for many years prior to the granting of the charter contained the reserved right to alter, amend, and repeal corporate charters, and every stockholder acquired his shares with full knowledge that his interest in the corporation was subject to regulation and taxation.

Moreover, the shares represent a property interest, an aliquot proportion of the whole corporate assets. The shareholders, whether domestic or foreign, depend for the preservation and protection of this property upon the law of the state of the corporation's domicile. The property right so represented is of value, arises where the corporation has its home, and is therefore within the taxing jurisdiction of that state; and this, notwithstanding the ownership of the stock may also be a taxable subject in another state."

POINT IV.

In view of the fact that the doctrine of a "business situs" was evolved in order to support a reasonable exercise of taxing power, it is peculiarly improper to invoke the doctrine as a means to provide corporations with complete immunity from taxation of intangibles, by denying the taxing power of the only state seeking to exercise it! Borrowing the language used by the Court in condemning theories that would lead to multiple taxation, as appropriate for condemnation of a theory that would afford an undeserved immunity from taxation, we urge that "such a startling possibility suggests a wrong premise".

The wrong premise in appellants' argument may be shown by three considerations:

First—The nature and reason for the doctrine of "business situs" is to permit the exercise by a state of its inherent taxing power in such a manner as to provide for an equitable and fair distribution of the burdens of government. It would be an

unwarranted perversion of the doctrine to so misapply it as to deny to a state its inherent taxing power and to prevent an equitable and fair distribution of the burdens of its government.

Second—Just taxation is a practical problem. There are many obvious examples of a coincident or alternative taxing power where, in the absence of any conflict or duplication, there would be no question raised as to the *authority* of more than one state to impose a tax upon the same owner, on the basis of the same property interests. Thus it cannot be contended that the State of New Jersey does not have "jurisdiction" or taxing power to tax corporations created by the state; and (according to the long established rule) to tax such corporations on their intangibles—in the absence of any effort by any other state to tax such corporations upon their intangibles. If, however, by virtue of the "business situs" theory, a coincident taxing power arises in another state, it must obviously be in the nature of an *alternative* taxing power, and in the event of a conflict or duplication the constitutional issue would be: Is there anything in the federal constitution excluding *one* of these states from the exercise of *its* taxing power because of a conflicting, or duplicating, exercise by the *other* state of *its* taxing power?

We submit that the foregoing issue can only arise where there is an *actual* conflict or duplication, and not where there is only the possibility of conflict or duplication—or where, as in the present case, there is *no* possibility of conflict or duplication.

Counsel for appellants endeavor to maintain the position that where one state has "jurisdiction to

tax" no other state can have such "jurisdiction". We submit that this is not the law and that the very doctrine of "business situs" proves that it is not the law, because the Court has repeatedly reaffirmed the "jurisdiction" of the state of the owner's domicile to tax intangibles, despite the possibility that such intangibles might be taxable at a "business situs" in another state. Certainly the "jurisdiction" of a state, that is, its inherent power of taxation, does not *cease*, even though it may be held to be inequitable, or even improper, to exercise such taxing power, so as to tax a person *again* on property as to which taxation by another state may be more justifiable.

Counsel for appellants take the position that the validity of taxation in one state cannot depend upon the question as to whether or not the property taxed is subjected to taxation in another state. But in one of the opinions of this Court particularly relied upon by appellants, *Farmers Loan Company* v. *Minnesota*, supra, it was held as follows:

> "*Southern Pacific Co.* v. *Kentucky*, 222 U. S. 63, indicates plainly enough that the right of one State to tax may depend somewhat upon the power of another so to do. And *Coe* v. *Errol*, 116 U. S. 517, 524, though frequently cited to support the general affirmation that nothing in the Fourteenth Amendment prohibits double taxation, does not go so far. It affirmed the rather obvious proposition that the mere fact of taxation of tangibles by one State is not enough to exclude the right of another to tax them."

Following up the last sentence of the foregoing quotation, we would point out that if it is an "obvious proposition" that "the mere fact of taxation of tangibles by one State is not enough to exclude the right of another to tax them", then it is a *still more obvious* proposition that the mere fact that intangibles *might* be taxed by another state (which does not in fact tax them) is not enough to exclude the right of the domiciliary state to tax them.

Third—Thus we come to our conclusion that the doctrine of business situs can and should be so interpreted and applied as to sustain appropriate taxation by any state wherein the owner of intangibles engages in business and uses some of the intangibles in that business, *without stretching the doctrine* so that the mere possibility of taxation of intangibles in another state deprives the state wherein the owner has his legal domicile of its "jurisdiction" to tax intangibles in a normal exercise of its coincident or alternative power of taxation.

POINT V.

Counsel for appellees contend—

A—That intangibles acquire a business situs for taxation in a foreign state only when—

1—They are essential and integral parts of business conducted in the foreign state—(of which there is no adequate proof in the present record).

2—They are definitely subjected to taxation by the laws of the foreign state—(which is admittedly *not* the case here).

3—They have been correctly determined by authorities of the foreign state (legislative, executive and judicial) to have a "business situs" within such state—(and no such determination has been made or could be made in the present case).

Counsel for appellees further contend—

B—That intangibles do not acquire a business situs through the mere deposit of documentary evidences within a foreign state, or through any activities of their owner which are not *coupled with* the exercise of a justifiable taxing power over such intangibles by the foreign state.

See, *Blodgett* v. *Silberman*, supra; *Baldwin* v. *Missouri*, supra; *Beidler* v. *So. Car. Tax Commission*, supra.

We call attention particularly to the fact that in the case last cited the Court held that application of the principle that intangibles are taxable by the state of the domicile of the deceased owner "is not defeated by the mere presence of bonds or notes, or other evidences of debt, within a State other than that of the domicile of the owner". And in answer to the claim that South Carolina could tax an indebtedness on the ground that it had "what is called a 'business situs' in that State", the opinion significantly held:

> "But a conclusion that debts have thus acquired a business situs must have evidence to support it".

Counsel for appellees further contend—

C—That whenever a "business situs" for taxation is actually given to intangibles in a foreign state (in compliance with the requirements outlined in the foregoing paragraph A), then, if the underlying taxing power of the state of the owner's domicile is to be in any degree curtailed or diminished in its exercise, such diminishment or curtailment should go only to the extent necessary to avoid double taxation. Taxation, as this Court has held, "is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences". (*Farmers Loan Company* v. *Minnesota*, supra.)

So counsel for appellees conclude and contend—

D—That, when the state of legal domicile provides an exemption from taxation for all properties (including intangibles) of a resident owner which are taxed outside the state, there is no basis for any restraint upon or denial of the constitutional power of the domiciliary state to tax resident owners upon intangibles not elsewhere taxed.

POINT VI.

Perhaps in recognition of the weakness of the "business situs" theory, as a basis for immunity from taxation, counsel for appellants lay considerable stress upon the claim that these corporations have established a "commercial domicile" outside New Jersey, the state of incorporation. Thus they apparently seek to establish a taxing power in the

state of such alleged "commercial domicile" to the exclusion of the original taxing power of the state of incorporation and legal domicile. We submit that although this Court has referred in various opinions to the "commercial domicile" which a corporation may establish outside the state of its incorporation, the Court has not indicated that the establishment of a "commercial domicile" (which we understand to mean only a "place of doing business") outside the state of incorporation operates to give the corporation anything resembling a new legal domicile, such as may be acquired by an individual who transfers his legal residence from the state of his birth to another state.

We would call attention briefly to the extraordinary consequences that might flow from such a doctrine. We believe it still to be the law, as long ago held by this Court, that a corporation "must dwell in the place of its creation and cannot migrate to another sovereignty". *Bank of Augusta* v. *Earle*, 13 Pet. 519, 588, cited with approval in *Cream of Wheat Company* v. *Grand Forks*, supra.

It is not within the power of a corporation to transfer at will its legal domicile, or to change its obligations thereunder. It is within the power of a corporation to establish offices and to do business in another state in accordance with the permission accorded by the laws of such other state. But if the stockholders of a corporation desire to establish the legal domicile of their corporate enterprise in another state, they are required to incorporate in that state. It may be convenient to describe the action of a corporation in establishing offices for the general conduct of its business in a foreign

state as the establishment of a "commercial domicile" therein. But we submit that such an action cannot operate to change the status of the corporation and its obligations within the state which created it, wherein alone it must "dwell" and have its legal domicile.

Let us consider for a moment the consequences of destroying the essential integrity of the legal domicile by the act of transferring business and thus seeking to "migrate" to one or more other states. A large corporation might well establish ten or fifteen main offices for the general conduct of its business in different sections of the country, thus establishing "commercial domiciles" in a dozen states. Then it might distribute the control of its intangibles through these offices, shifting such control and moving the evidences of its intangibles from one jurisdiction to another in the endeavor to avoid, as far as possible, taxation based on these valuable property rights. This is only one example of the unwarranted freedom from responsibilities which might follow upon weakening the sound and long established rule that a corporation has a single legal "domicile" in the state of its incorporation, just as an individual has a single legal residence, wherein the full obligations of the legal domicile must be fulfilled just as an individual may be held to the fulfillment of his legal obligations as a citizen in the state of his legal residence.

We submit that, in addition to the difficulties and the opportunities for tax evasion which arise out of the doctrine of a "business situs", the problem of just taxation should not be complicated by sanctioning another legal fiction, or "metaphor", in the

form of a "commercial domicile", which will increase the difficulties and conflicts of authority involved in levying taxes upon corporations doing business in more than one state. We submit that the "business situs" of intangibles for purposes of taxation depends, not on localization of management, but upon localization of the intangibles. It appears that this conclusion must follow inevitably upon the reasoning of the Court in *New York ex rel. Whitney* v. *Graves*, supra.

POINT VII.

Counsel for appellants endeavor to support their position by the citation of various decisions of state courts. It does not appear necessary to analyze these decisions further than to point out that, in the first place, there is a serious conflict of authority; and it appears that a majority of the states support taxation by the state of domicile, even though credits are taxed in another state under the "business situs" theory. This is the conclusion of a review of the cases by Professor Brown, appearing in 48 Harvard Law Review, 407, under the title of Multiple Taxation by the States.

In the second place, we point out that this conflict of authority definitely supports our position in the present case, which is that a business situs for taxation does not arise until such taxation has been legislatively imposed, executively enforced and judicially approved in a particular state. For example, the Supreme Court of Michigan has repeatedly declined to approve the "business situs" theory to support the taxation of intangibles owned by foreign corporations doing business in that

State, and consistently has approved of the taxation in Michigan of intangibles owned by domestic corporations. The Supreme Court of Michigan has recently held, as follows:

> "We again have before us the question of whether the maxim *mobilia sequuntur personam*—movables follow the person—shall be followed in the computation of this excise, or whether we should adopt for convenience the theory of business situs. The same question has been before us on four occasions: *White Bros. Lumber Co.* v. *Tax Appeal Board*, 222 Mich. 274; *Saginaw Manufacturing Co.* v. *Secretary of State*, 226 Mich. 1; *In re Portland Hotel Co.*, 232 Mich. 330; *In re Dodge Bros.*, 241 Mich. 665. In each of these cases we have recognized the common law rule that the situs of intangible property is the domicile of its owner, and in the *Dodge Brothers Case* we pointed out that it was within the province of the legislature to change this rule, but that until changed by the legislature, we could not adopt a 'business situs' instead of the situs of the owner for the purposes of the act. Two of these cases involved domestic corporations, two foreign corporations. We applied this rule alike to both classes. It resulted in the use of the intangibles in making the assessment upon the two domestic corporations and their elimination in the cases of foreign corporations. Unless we overrule these cases, which we are not inclined to do, the computation made by the Secretary of State

must be upheld." *In re Truscon Steel Co.*, 246 Mich. 174.

Since the laws of the State of New York do not impose any personal property tax on these foreign corporations, there has been and can be no holding by the courts of the State of New York that the intangibles in question have a "business situs" for taxation in the State of New York. The assumption that these intangibles are "subject" to taxation in New York is not only without foundation, but is contrary to fact. But let us assume that, according to the argument of counsel for appellants, these corporations could by private action establish a "business situs" for intangibles which would make them "subject to taxation" in another state and which would, according to counsel's argument, destroy the jurisdiction of New Jersey to tax them; and then let us make the further reasonable assumption that these corporations should seek to establish such a "business situs" in Detroit, Michigan. Could it be contended that by any holding of a New Jersey court these intangibles could be given a "business situs" for taxation in the State of Michigan, when the highest court of Michigan holds that a foreign corporation cannot make its intangibles subject to taxation in Michigan—that is, cannot give such intangibles a "business situs" for taxation in the State of Michigan?

We submit that the conflict of authority in the state courts again emphasizes our original point to the effect that the intangibles here in question have not been given a "business situs" for taxation in the State of New York and that, therefore, there is no basis for questioning the normal taxing power

of the State of New Jersey—the power to tax these intangibles at the legal domicile of the owner in New Jersey.

We should also call attention to the pertinent decision of the Circuit Court of Appeals of the Tenth Circuit in a case involving the right of Oklahoma to tax stocks and bonds owned by an Oklahoma corporation but held by the corporation at its general office in Wichita, Kansas. The corporation alleg d that the stocks and bonds held in Wichita had acquired a business and taxable situs in Kansas and were not taxable in Oklahoma; although it was not alleged that the stocks and bonds had ever been taxed in Kansas. The court held these intangibles taxable by Oklahoma, the legal domicile of the Oklahoma corporation, citing *Blodgett* v. *Silberman*, supra, and *First National Bank* v. *Maine*, supra. The following quotation from its opinion is pertinent to th present issue:

> "The pleader here tried to bring this case within claimed exceptions to the general rule by alleging that the stocks and bonds had acquired a business and taxable situs at Wichita in the State of Kansas, but it seems obvious from the allegations of the bill that they were purchased with surplus funds not needed at the time in appellant's business, and it is difficult to see how they would become associated with and a part of business activities carried on in Kansas and taxable there." *Rounds & Porter Lumber Co.* v. *Livesay*, 66 F. (2d) 298.

Recognizing that this Court is properly concerned with the avoidance of multiple taxation wherever

that is possible and justifiable, we submit that the most practical and desirable way to avoid multiple taxation, while at the same time sustaining unimpaired the sovereign power of each state to tax appropriately persons and corporations legally domiciled within the state, is that method adopted by the State of New Jersey in providing a specific exemption from taxation for the personal property owned by citizens and corporations domiciled in the state which is actually taxed outside the state. We submit that the taxing power of a state which so fairly restricts the exercise of its own power, which so generously defers to the assertion of any conflicting or coincident taxing power by another state, should not have its taxing power destroyed or diminished by the evolution of a constitutional prohibition born of such a union of legal fiction and false logic as is attempted in aid of the present appeal.

POINT VIII.

Counsel for appellees would be derelict if they did not point out that appellants are seeking in the present case to take advantage of their violation of statutory obligations as a means of evading taxation otherwise clearly within the power of the state of incorporation. We have regarded the major issues in this case as of so much greater importance that we have not stressed this minor issue; although it might well be a decisive one.

The laws of New Jersey, under which these corporations were chartered, required the corporate charter to state "the place where the principal office of said company is to be located and its general business to be conducted, *which shall be within*

this State". 2 Compiled Statutes, 2839, Amended Laws, 1929, Chapter VI, page 18[1].

This requirement was still in effect at the time when the taxes here involved were imposed. These corporations had represented, and presumably were continuing to represent in annual reports, that they had their principal office where the general business of the corporation was conducted within the State of New Jersey. If they had continued to fulfill this statutory obligation, there would presumably have been no question as to the validity of the taxes imposed when each of these corporations was assessed, as required by law, upon "the full amount of its capital stock paid in and accumulated surplus"—minus the amount of any assessment upon real estate, and after deduction of any property exempt because actually assessed and taxed outside the state.

But, in order to provide a basis for avoiding the payment of taxes properly levied under the law of the State upon a domestic corporation maintaining, as required by its statute, its principal office and the general conduct of its business within the State, these corporations asserted their wilful violation of statutory obligations in alleging that they had transferred their principal offices and the general conduct of their business to another State. Specifically, Newark Fire Insurance Company alleged the transfer of its executive offices and the conduct of the general business of the company "since appellant moved its main office from Newark six years ago". (Newark R. page 15.) The Uni-

[1] Although, as previously pointed out, the Newark Company was chartered by a Special Act, it is also subject to this statutory requirement.

versal Companies, through the testimony of Vice-President and Secretary Byrne, testified that the "principal business office" of the companies was at 111 Johns Street, New York City, on the assessment date, October 1, 1934, and that the business of the companies was "conducted from that office", *through a management corporation.* (Universal R. pp. 30, 31.)

Whether the conduct of business through a management corporation in the State of New York would or would not provide the basis for a "business situs" for the taxation of intangibles in that State might be a vital issue if the question of "business situs" were to be submitted to a competent court of the State of New York for a decision. In view, however, of our belief that there has been no effective legal finding that any intangibles of any of the appellants have a "business situs" for taxation in New York, we will not stress this minor point.

In conclusion, however, on our last major point, we do submit that, since appellants can only challenge the taxing power of the State of New Jersey by alleging that they have removed themselves and their property from the "jurisdiction" of the State, in violation of statutory obligations, we would seriously question whether they should be permitted to take advantage of their own wrong as a means of evading taxation otherwise undoubtedly within the power of the state of incorporation.

CONCLUSION

It is respectfully submitted that, for the reasons urged herein, either the appeal should be dismissed

for want of jurisdiction, or the judgment of the New Jersey Court of Errors and Appeals should be affirmed.

Respectfully submitted,

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